

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 1997-239-C – ORDER NO. 2005-30

JANUARY 24, 2005

IN RE: Proceeding to Establish Guidelines for an)	ORDER DENYING
Intrastate Universal Service Fund)	REHEARING OR
)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (“Commission”) upon the Petitions of the South Carolina Cable Television Association (“SCCTA”) and the Acting Consumer Advocate for the State of South Carolina (“Consumer Advocate”) for rehearing or reconsideration of Commission Order No. 2004-452 issued on September 28, 2004, in the above-captioned docket.

A. Consumer Advocate Petition

The Consumer Advocate first asserts that in Order No. 2004-452, this Commission reaffirmed its findings from prior orders concerning the State Universal Service Fund (“State USF”). The Consumer Advocate goes on to allege that the Companies’¹ case in this phase of the State USF proceeding suffers from the same legal infirmities as set forth in the Consumer Advocate’s appeal of Commission Order Nos. 98-322, 2001-419, 2001-704, 2001-996, and 2001-1088, which is currently pending before

¹ In this Order, “Companies” refers to the entities actively pursuing requests for funding as addressed in appealed Order No. 2004-452: ALLTEL South Carolina, Inc. (“ALLTEL”), Bluffton Telephone Company, Inc. (“Bluffton”), Hargray Telephone Company, Inc. (“Hargray”), Home Telephone Company, Inc. (“Home”), Horry Telephone Cooperative, Inc. (“Horry”), and PBT Telecom (“PBT”).

the South Carolina Supreme Court. The Consumer Advocate then incorporates the legal arguments set forth in its Brief before the Supreme Court into its Petition by reference, including, but not limited to purported violations of S.C. Code Ann. Section 58-9-280(E), an alleged violation of 47 U.S.C. Section 254(k), and alleged violations of FCC Separations requirements set forth in 47 C.F.R. Part 36. We believe, as we have stated before, that these allegations are without merit. Our findings and conclusions were fully set forth in the referenced orders, which have been affirmed by the Circuit Court. Order of the Honorable J. Ernest Kinard, Jr., dated September 30, 2002 (“Order of Judge Kinard”). The Commission’s position with respect to the appeal of those issues, which is currently before the Supreme Court, is fully set forth in our Joint Brief with the South Carolina Telephone Association in the referenced appeals. This portion of the Consumer Advocate’s Petition is therefore denied.

The Consumer Advocate also incorporates additional errors it alleges were made in Order Nos. 2003-215 and 2003-345, orders which were issued by this Commission in a previous phase of implementation of the State USF and which are currently on appeal in the Richland County Court of Common Pleas. Like the matters included in the Supreme Court appeal, matters that were raised previously have already been disposed of by this Commission and will not be re-addressed here.

The Consumer Advocate also cites the portion of our Order No. 2004-452 which stated that the amount of funding requested by the LECs in this case, when combined with the funding received from the first phase, does not exceed 2/3 of the company-specific State USF for each respective company. In addition, the Commission found that

the amount of funding requested by Alltel, Hargray, and Horry, when combined with the funding received from the first phase, does not exceed 1/3 of the company-specific State USF for each respective company and, therefore, these companies are not required to update the results of their cost studies for basic local exchange service. According to the Consumer Advocate, these findings are not supported by the evidence in this case. The Consumer Advocate states that at no time, and in no prior order in this case has the Commission actually determined a total amount for the State USF or any company-specific amount for the State USF. Thus, the Consumer Advocate asserts that there is no way to determine whether the amounts requested by the LECs do not exceed 1/3 or 2/3 of the total, when there has been no determination as to what the total is.

As the Circuit Court concluded, the Commission acted properly in accordance with its statutory mandate, and in the public interest, in sizing and ordering implementation of the State USF. See Order of Judge Kinard, at 21, 43. The Commission sized the fund according to the statutory formula provided in S.C. Code Ann. Section 58-9-280(E). See Commission Order No. 2001-704 at 5, 9-10, Order of Judge Kinard at 20-24, TR of third USF proceeding at Vol. V, pp. 1188-90 (July 21, 2000), and Hearing Exhibit No. 11 in the third USF proceeding. The Commission determined the cost of providing basic local exchange service for each carrier of last resort, including the companies requesting funds in the instant proceeding, and sized the fund based on the difference between the cost and the maximum amount each carrier of last resort could charge for the service. See Commission Order No. 98-322, Commission Order No. 2001-704 at 5, 9-10, Order of Judge Kinard at 20-24, TR of third USF

proceeding at Vol. V, pp. 1188-90 (July 21, 2000), and Hearing Exhibit No. 11 in the third USF proceeding. Further, for South Carolina Telephone Coalition members, including the LECs requesting State USF funding in the instant proceeding, embedded cost studies were run and the resulting maximum State USF amounts were presented. These amounts were used by the Commission to size the State USF. The State USF has been sized, according to the statutory formula, and this Commission properly determined that the amount of additional funding requested by each of the LECs requesting funds in this proceeding did not exceed $\frac{2}{3}$ of the LEC's company specific State USF amount. The Commission also properly determined that the amount of funding requested by Alltel, Hargray and Horry, when combined with the funding received from the first phase, does not exceed $\frac{1}{3}$ of the company-specific State USF for each respective company and, therefore, these companies are not required to update the results of their cost studies for basic local exchange service.

As testified to by witness Emmanuel Staurulakis in the present proceeding, this Commission's Order No. 2001-419 limits the amount of funding that an eligible South Carolina incumbent local exchange carrier may withdraw from the State USF in the second phase of implementation to no more than an amount equivalent to two-thirds (66.67%) of its company-specific State USF amount. TR at 74. Mr. Staurulakis noted that, for each of the five companies for which he was testifying, the amount of funding per the first phase (access step and end user step), when combined with the amount requested in the second phase, does not exceed the two-thirds limitation approved by the Commission. TR at 74; Hearing Exhibit No. 3. Likewise, witness Jane Eve testified that

the amount of funding requested by Alltel, when combined with prior funding received, does not exceed 33% of the eligible State USF for Alltel. TR at 15. Therefore, the Consumer Advocate's allegation that the Commission's findings on this point are not supported by the record is without merit.

Finally, the Consumer Advocate states that there is no evidence of record to support the large percentage increases in access line costs reported by the companies in their filings. To the contrary, the only evidence of record is that those costs are increasing. As Mr. Staurulakis testified, the updated cost studies show that the cost per line for basic local exchange service for the three companies who were required to provide updated monthly cost of service figures increased when compared with the original results calculated in the initial State USF cost proceeding. For Bluffton, the cost per line increased from \$50.07 to \$53.78. For Home, the cost per line increased from \$46.14 to \$58.08. For PBT, the cost per line increased from \$56.49 to \$61.29. TR. at 75-76; Hearing Exhibit No. 3. The methodology used in these updated cost studies was consistent with the methodology previously used by the companies and approved by the Commission for use in this docket. TR. at 79. Neither the Consumer Advocate nor any other party offered evidence to the contrary, and the Consumer Advocate in his Petition offers only an unsupported statement that "costs are generally decreasing" in the industry, along with vague assertions as to why he believes the results of the cost studies are "inexplicable." Petition at ¶ 6. As we stated in Order No. 2004-452, we are satisfied that the results of the updated cost studies show that the companies' requests are appropriate and that no company's request exceeds its appropriate cost or the allowable State USF for

that specific company in the second phase of State USF implementation. Order No. 2004-452 at 21.

For all of the reasons discussed above, we find that the Consumer Advocate's allegations are without merit, and the Consumer Advocate's Petition for Reconsideration of Commission Order No. 2004-452 is denied and dismissed.

B. SCCTA Petition

Also filed with this Commission was a Petition for Rehearing or Reconsideration of Order No. 2004-452 by the South Carolina Cable Television Association ("SCCTA"). SCCTA likewise challenges Commission Order No. 2004-452 on the same grounds as those contained in its appeal of the Commission's prior State USF orders. SCCTA also raises issues in its petition that were raised by the Consumer Advocate in the pending consolidated appeal before the South Carolina Supreme Court. Those matters have already been decided by this Commission, our Orders have been affirmed in all respects by the Circuit Court, and the Supreme Court will decide those issues upon review of the Circuit Court Order.

SCCTA also incorporates additional errors it alleges were made in Order No. 2003-215, an order issued by this Commission in a previous phase of implementation of the State USF. Like the matters included in the Supreme Court appeal, matters that were raised previously have already been disposed of by this Commission and will not be re-addressed here.

Regarding our Order No. 2004-452, SCCTA raises one of the same issues put forth by the Consumer Advocate, that is, an issue related to the size of the fund and the

Commission's finding that the amount of funding requested by the LECs in this case does not exceed 2/3 of the company-specific State USF for each respective company, and that the amounts requested by Alltel, Hargray and Horry, when combined with the funding received from prior phases of the State USF, does not exceed 1/3 of the company-specific State USF amount for each company. We have already addressed this issue above, and believe that the point should be addressed similarly herein in response to the SCCTA's Petition.

In paragraph 7 of its Petition, SCCTA argues that the Commission's State USF guidelines are flawed in that the phased-in plan allows ILECs to continue to receive subsidies from implicit sources as well as explicit funding from the State USF, and there is no mechanism to determine how much implicit support is generated through the ILECs' rates. This is similar to SCCTA's argument in opposition to our prior Order No. 2003-215 that there is no evidence of the extent to which the rates to be reduced are providing implicit support for basic local exchange service. To the contrary, and as we stated in our Order No. 2003-345 denying reconsideration of Order No. 2003-215, the Commission has sized the State USF based on the difference between the cost of providing basic local exchange service and the maximum amount that can be charged for such service. This defines the amount of support for basic local exchange service that is currently being derived from rates for other services offered by the carrier. The amount by which those other rates are priced above their respective cost is the amount of implicit support for basic local service built into those other rates. Furthermore, SCCTA seems to be attempting to argue that the guidelines and procedures may allow companies to over-

recover from the State USF. As we stated in Order No. 2004-452, these concerns are unfounded because the State USF is revenue-neutral. The Commission requires that each eligible LEC must make dollar-for-dollar reductions in rates containing implicit support before the LEC can withdraw explicit support from the State USF. Commission Order No. 2004-542 at 24-25; see also TR at 76; Commission Order No. 2001-419 at 42; Section 4 of the Guidelines for State USF, attached as Exhibit A to Commission Order No. 2001-996. Therefore, SCCTA's contention is without merit.

In paragraph 8 of its Petition, SCCTA argues that Order No. 2004-452 violates 47 U.S.C. Sections 254(f) and (k) because the State USF Guidelines do not provide sufficient information for the Commission to prevent discrimination and cross subsidization. This is similar to arguments that have been raised by the SCCTA and the Consumer Advocate in previous petitions and appeals. It is essentially another attempt to collaterally attack the models and methodologies that were adopted and approved by this Commission in our Order No. 1998-322 following the cost proceeding in this docket. Any properly preserved issues and arguments relating to the cost models and methodologies are being addressed in the SCCTA's direct appeal of Order No. 1998-322 as appropriate, and we will not re-address them here.

In paragraph 9, SCCTA alleges that Order No. 2004-452 violates S.C. Code Ann. § 58-9-280(E)(6) in that the State USF Guidelines do not include sufficient regulatory safeguards with respect to the submission of updated cost studies. SCCTA further asserts that the studies submitted by the LECs were not audited and no testimony was presented by the ILECs regarding the studies. First, this is similar to prior arguments and, like the

argument raised in paragraph 8 of its Petition, is an attempt to collaterally attack the models and methodologies that were adopted and approved by this Commission in our Order No. 1998-322 following the cost proceeding in this docket. As stated above, any properly preserved issues and arguments relating to the cost models and methodologies are being addressed in the SCCTA's direct appeal of Order No. 1998-322 as appropriate, and we will not re-address them here.

Additionally, we note that SCCTA's factual allegations on this point are simply wrong. SCCTA first asserts that the Guidelines do not include sufficient regulatory safeguards with respect to the submission of cost studies. To the contrary, as we stated in Order No. 2001-419, we held lengthy hearings to address cost models and methodologies in this docket, hearing evidence through 5 days of hearings that included the testimony of 25 witnesses, including economic, financial, engineering, and cost experts, among others. See Commission Order No. 2001-419 at 41. Our Order further required that the results of these cost studies be updated by each LEC before that LEC's State USF withdrawal exceeds one-third of its company-specific State USF amount. Id. at 42. As we found in Order No. 2004-452, the cost studies filed by the respective LECs clearly demonstrate that implicit support exists in the rates they seek to reduce. Order No. 2004-452 at 19.

SCCTA also alleges that the studies were not audited, and that no testimony was presented by five of the ILECs. This is not true. As for audits, the cost studies were made available through discovery to all parties and to the Commission Staff. The Commission Staff did in fact audit the cost studies, as testified to by Commission Staff witness and auditor Barbara J. Crawford. Ms. Crawford concluded after the Commission

Staff's audit that the cost studies were supported by the various companies' books and records. TR at 160. With respect to the alleged lack of testimony, SCCTA's assertion that no testimony was presented by five of the ILECs is puzzling. Mr. Staurulakis testified on behalf of the five SCTC ILECs regarding the methodology and results of the studies. See TR at 66-80 (at pp. 67 of the transcript, Mr. Staurulakis states "I have been requested to testify on behalf of the five incumbent local exchange carriers . . ."). Clearly this is appropriate, in that the cost studies were performed by Mr. Staurulakis's telecommunications consulting firm, John Staurulakis, Inc., on behalf of the individual companies.

Finally, in paragraph 10 of its Petition, SCCTA contends that a final decision in this matter should not have been issued until the ILECs provide the information they were ordered to produce in Order No. 2004-173 that was issued September 28, 2004. SCCTA asserts the materials requested were relevant to establish whether the ILECs over-recovered money from the USF. Contrary to SCCTA's allegations, all ILECs with the possible exception of Alltel provided responses to SCCTA interrogatories prior to the hearing. See (1) Responses and Objections of Bluffton Telephone Company, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom to Interrogatories of the South Carolina Cable Television Association, dated January 22, 2004 (objections); (2) Responses of Bluffton Telephone Company, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom to Interrogatories of the South Carolina Cable Television Association, dated March 5, 2004 (substantive

responses); and (3) Revised Responses of Bluffton Telephone Company, Inc., Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., and PBT Telecom to Interrogatories of the South Carolina Cable Television Association, dated April 26, 2004 (revised substantive responses).² These five ILECs responded fully and substantively to the SCCTA's interrogatories, and the SCCTA did not object to the adequacy of the responses provided by the five ILECs. In fact, SCCTA's counsel stated that he had put together a "packet" of those responses and placed them in the record. TR at 198-99; Hearing Exhibit No. 5. With respect to Alltel, counsel for SCCTA did not enter an objection at the hearing or even mention the fact that it had not received responses from Alltel. No proffer was made as to how SCCTA would use the information it now suggests it needed and did not receive. In fact, the only mention of this during the course of the hearing is when counsel for SCCTA acknowledged during his cross-examination of Alltel witness Jane Eve that he had "some conversations" with Alltel's counsel and an Alltel representative "following up on some discovery requests," and that "some information" was provided to him by Alltel. TR at 20. He then proceeded to question Ms. Eve with respect to that information. A petition for rehearing or reconsideration is not the appropriate time to resolve a discovery dispute, particularly when no objection was raised at the hearing as to any alleged lack of

² The five LECs initially filed objections to SCCTA's interrogatories on the ground that the information sought was neither relevant nor likely to lead to the discovery of relevant evidence. SCCTA filed a motion to compel, and the Commission voted in a regular agenda session on February 25, 2004, to grant the motion. Despite the fact that the written order granting the motion to compel was not issued until September 28, 2004, the five LECs filed substantive responses on March 5, 2004, and revised responses on April 26, 2004.

response. We find SCCTA's contention to be without merit, and deny its Petition on this ground.

For the reasons stated herein, SCCTA's and the Consumer Advocate's Petitions for Rehearing or Reconsideration of Commission Order No. 2004-452 are denied and dismissed.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)